IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

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JUDGMENT

Hanuman Ram and another.
vs.
Anada Ram.

S.B.CIVIL SECOND APPEAL NO.185/2006 UNDER SECTION 100 CPC AGAINST THE JUDGMENT AND DECREE DATED 15.4.2006 PASSED BY SHRI S.K. PAREEK, DISTRICT JUDGE, PALI IN CIVIL APPEAL (DECREE) NO.11/2006.

DATE OF JUDGMENT ::: 18.5.2006

PRESENT

HON'BLE MR. PRAKASH TATIA, J.

Mr. DLR Vyas, for the appellants.

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REPORTABLE

BY THE COURT:

Heard learned counsel for the appellants.

According to learned counsel for the appellants, one of the appellants, Dhanna Ram father of Hanuman Ram filed one suit for possession being Civil Original No.82/2004 against respondent Anada Ram, plaintiff of civil original no.164/2004. Said suit no.82/2004 was withdrawn by Dhanna

Ram on 4.12.2004. It will be relevant to mention here that on 4.12.04, it was submitted before the trial court by the plaintiff in civil original no.82/2004 that he will get justice through administrative authorities in the Abhiyan "Administration towards Villages", therefore, the plaintiff wants to withdraw the suit with liberty to file fresh suit. On this plea, the trial court dismissed the suit of the plaintiff with permission to file fresh suit by order dated 4.12.04.

When said Dhanna Ram withdrew the suit, defendant Anada Ram in suit no.82/04 apprehending his highhanded dispossession from said Dhanna Ram and his son Hanuman Ram, filed present suit for injunction against Dhanna Ram and Hanuman Ram in the trial court on 6.12.04 which was registered as Civil Original no.164/04. Said suit No.164/04 was registered on 7.12.2004 and notices were issued to the defendants. On 9.12.2004, interim order was passed by the trial court in favour of plaintiff Anada Ram against defendants Dhanna Ram and Hanuman Ram. It is alleged that on 9.12.2004 itself, plaintiff Anada Ram was dispossessed, obviously by administrative authorities and possession was handed over to the defendants/appellants.

The trial court after trial dismissed the suit no.164/04 of plaintiff Anada Ram on the grounds that he failed to prove his title and also failed to prove his possession of 60 years as he claimed.

Plaintiff Anada Ram preferred a regular first appeal against the judgment and decree of trial court dated 14.2.2006. The first appellate court, after considering all

the facts of the case and proceedings taken by plaintiff Dhanna Ram in suit no.82/04 and the manner in which plaintiff Anada Ram was dispossessed and after noticing the interim order dated 9.12.2004, held that plaintiff Anada Ram's prior possession was admitted possession and the appellants with the help of administrative authorities and that help was provided to defendants Dhanna Ram and Hanuman Ram because Dhanna Ram gave threat to the administrative authorities of self immolation, got possession of plot from Anada Ram, therefore, they had no right to remain in possession of the disputed plot. In the above facts and circumstances, the first appellate court granted decree of possession for plot measuring 20 feet x 80 feet of which the appellants highhandedly took possession from the plaintiff with the help of Tehsildar. The first appellate court also restrained the appellants from dispossessing plaintiff Anada Ram from the plot in dispute.

Being aggrieved of the judgment and decree of the first appellate court dated 15.4.2006, the appellants preferred this second appeal.

According to learned counsel for the appellants, the earlier suit filed by Dhanna Ram, who was not the real owner of the property and in the present suit, Hanuman Ram is party who is the real owner of the property, therefore, withdrawal of suit by Dhanna Ram is of no consequence so far as against the interest of Hanuman Ram is concerned. It is also submitted that plaintiff Anada Ram did not gave the measurements of the plot from which he was dispossessed. It

is also submitted that the trial court, after considering the facts, rightly held that the plaintiff failed to prove his possession since last 60 years and did not disclose exact measurement of encroached land. According to learned counsel for the appellants, the administrative authorities dispossessed Anada Ram as Anada Ram illegally encroached upon Hanuman Ram's plot and gave possession of the plot to the appellant, rightful owner, therefore, the plaintiff could not have been granted relief of possession against the rightful owner of the plot.

According to learned counsel for the appellants, no suit for injunction is maintainable against the real owner is the law laid down by the Hon'ble Apex Court in the case of Premji Ratansey Shah and others vs. Union of India and others reported in (1994) 5 SCC 547, wherein the Hon'ble Apex Court held that, “It is equally settled law that injunction would not be issued against the true owner. Therefore, the courts below have rightly rejected the relief of declaration and injunction in favour of the petitioners who had no interest in the property. Even assuming that they had any possession, their possession was wholly unlawful possession of a trespasser and an injunction cannot be issued in favour of a trespasser or a person who gained unlawful possession, as against the owner. Pretext of dispute of identity of the land should not be an excuse to claim injunction against true owner.”

Learned counsel for the appellants also relied upon the judgment of the Hon'ble Supreme Court delivered in the case

of Tamil Nadu Housing Board vs. Viswam (Dead) by LRs. reported in (1996) 8 SCC 259, wherein the Hon'ble Supreme Court held that, “a trespasser cannot claim injunction against the owner”.

Learned counsel for the appellants submits that the first appellate court heavily relied upon the Commissioner's report and that is not the substantive piece of evidence as held by this Court in the case of Ram Kishan Taparia vs. Shyamlal & Ors. reported in 2000 WLC (Raj.) UC 186. However, in the said judgment, it has been laid down that the provisions of Order 26 CPC cannot be used for collective evidence and the matter came up before this Court in revision against the rejection of application submitted for appointment of Commissioner.

Learned counsel for the appellants further submits that the suit for injunction simplicitor was not maintainable without substantive relief of declaration as held by this Court in the case of Gulam Mohd. Qureshi vs. Nagar Nigam, Jaipur reported in 1999 WLC (2) Raj. 595.

I considered the submissions of learned counsel for the appellants and perused the facts of the case.

So far as the facts which are not in dispute are that Dhanna Ram, one of the defendant and none else then the father of the alleged owner Hanuman Ram himself filed the suit no.82/2004 for possession against present plaintiff Anada Ram in the civil court. Said suit was withdrawn on 4.12.2004. It will be worthwhile to quote the order which

was passed in the appellant's suit no.82/2004, which is as under :-

" 4.12.04

वकुलाय उप. वादी स्वयं उपस्थित वादी स्वयं ने जाहिर किया कि प्रशासन गांवों की ओर में मुझे न्याय मिलने की उम्मीद हैं लिहाजा मैं वाद आगे चलाना नहीं चाहता। वादी के हितों को एवम् पुन: वाद लाने के अधिकारों को सुरक्षित रखते हुए वादी का वाद विड्रो करने की अनुमति दी जाती हैं। वादी का वाद जरिये विड्रोल खारिज किया जाता हैं। पत्रावली फैसल शुमार होकर दाखिल दफ्तर हो।"

From the said order, it is clear that the plaintiff voluntarily withdrew the suit merely on the ground that he will get justice through administrative authorities. The trial court accepted such a prayer and permitted the plaintiff to withdraw the suit with permission to file fresh suit without examining whether on such ground, the Court could have granted any permission to the plaintiff to withdraw the suit with liberty to file fresh suit. The suit can be withdrawn unconditionally as a matter of right unless any right is accrued to other party. But for permission of filing fresh suit for the same relief, there must exists lawful reason like formal defect in the suit etc. The court is required to apply its judicial mind before any permission is granted to the plaintiff to withdraw suit with liberty to file fresh suit. Such permission cannot be granted just for asking of the plaintiff. Be it as it may be, the order dated 4.12.2004

only permitted plaintiff Dhanna Ram to file fresh suit and admittedly, no fresh suit has been filed by Dhanna Ram or Hanumana Ram.

It appears that the suit no.82/04 was withdrawn by Dhanna Ram on 4.12.2004 and present plaintiff Anada Ram filed suit no.164/2004 immediately thereafter within two days on 6.12.2004. The suit was registered on 7.12.2004 and interim order was also passed on 9.12.2004 and plaintiff Anada Ram was dispossessed with the help of administrative authorities on 9.12.2004, therefore, it is clear that even according to the present appellants, Anada Ram was in possession of the suit property and was resisting any effort of the appellants of taking possession from Anada Ram. The manner in which Anada Ram was dispossessed by the appellants with the help of administrative authorities and that too after withdrawing the suit from the civil court and that too after the institution of the suit by Anada Ram plaintiff/respondent was sufficient ground for issuance of mandatory injunction of removal of illegal possession of the present appellants. It appears that the appellants, in fact, opted for a procedure for taking possession which is not recognized by law and unfortunately, the civil court granted permission to appellant Dhanna Ram to withdraw the suit with liberty to file fresh suit. The State authorities have no jurisdiction to give help to the persons for getting possession of their property which is in possession of third party unless that power is given by law. The appellant failed in showing any lawful jurisdiction of the administrative authorities like District Collector and of

Tehsildar which empowers them to settle private dispute or pass any order of dispossession of any person from private property and dispossess any person from private property and give possession to the person who may have claimed possession even as owner of the property. The District Collector as well as the Tehsildar has no such jurisdiction in the name of Abhiyan.

The law recognizes only lawful means for taking possession and the administrative authorities have no jurisdiction to behave like agent of any of the party and give administrative help to those private parties who may have more faith in them rather then the Court of law and that faith may be because of very many reasons. The action on the face of it of the administrative authorities, may it be any Abhiyan, was nothing but a highhanded action only in this case.

As stated above, by the order in civil suit no.82/2004 filed by Dhanna Ram, he got only right to file fresh suit and nothing more. Firstly, by withdrawing the suit, Dhanna Ram lost his all rights to agitate the issue which he himself has abandoned by withdrawing it.

So far as seeking injunction against the true owner is concerned, the law is well settled and in all cases, injunction cannot be claimed by the person who has no lawful authority to remain in possession and particularly when, he is seeking injunction against the true owner. Here in the suit no.82/2004, the relief of possession was sought

by Dhanna Ram from respondent Anada Ram by filing the suit in the civil court admitting settled possession of Anada Ram. Therefore, Anada Ram had possessory title. Suit was not for declaration of title etc. And the suit was filed when the respondent was in possession, therefore, at that time, the suit for mere injunction on the basis of possessory title or settled possession and where possession of the plaintiff is admitted by the appellants, was maintainable. In a suit for injunction where the plaintiff is dispossessed during the pendency of the suit, relief can be molded and relief of possession can be granted, in case, case is made out for grant of such relief. In this case, which is one of the rarest of rare case, if the relief of mandatory injunction would not have been granted by the first appellate court, serious miscarriage of justice would have resulted recognising highhandedness of the administrative authorities in connivance with the greedy persons and who have shown disrespect to the court proceedings and gave preference to the wholly unauthorised act of the administrative authorities.

The Hon'ble Supreme Court in the case of Premji Ratansey Shan (supra) observed that in the said case, even if it is assumed that the petitioners are in possession, then their possession was wholly unlawful possession of a trespasser and in that fact circumstances, held that injunction cannot be issued in favour of trespasser or a person who gained possession unlawfully and, therefore, relief of injunction cannot be granted against a true owner.

Here in this case, injunction has not been sought by a person who at the time of filing of the suit was in possession wholly unlawfully or as trespasser because of the simple reason that his possession was admitted by the appellants in their own suit no.82/2004. They sought relief of possession but could not get the relief, may it be because of withdrawal of their suit and may it be with liberty but the fact remains that no second suit has been filed by the appellants for recovery of possession, therefore, on the basis of earlier possession, the respondent could have resisted all illegal actions. At this stage, it will be worthwhile to mention here that the appellants themselves have admitted that they did not took possession of the suit property by their own accord. They took the possession of the plot through administrative authorities and admittedly, the administrative authorities are not the true owners of the plot in dispute, therefore, in fact, plaintiff Anada Ram was dispossessed by not true owner but by the administrative authorities. Therefore also, suit for injunction in these peculiar facts was maintainable and the Court was fully justified in granting relief of possession by removal of defendants/appellants, in fact, trespassers, who came in possession with the help of some authorities.

So far as contention of learned counsel for the appellants that the Commissioner's report cannot be a substantive piece of evidence or Commission cannot be issued to collect evidence is concerned, that issue does

not arise in this appeal because of the simple reason that even if the Commissioner's report is rejected or is not taken into consideration, then also, the facts which have been stated by the appellants clearly demonstrate that it is a case of admitted possession of the respondent till he filed the suit and was dispossessed during pendency of this suit itself where the injunction was sought by the plaintiff prior to his dispossession and injunction was granted by the court and on the same day, the plaintiff/respondent was dispossessed.

In view of the above discussion, no substantial question of law arises in this appeal. Accordingly, this appeal, having no merit, is hereby dismissed.

(PRAKASH TATIA), J.

S.Phophaliya